

Message

From: Schoellkopf, Lynde [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=739D462E81EF4540A4994C7D907C2595-SCHOELLKOPF, LYNDE]
Sent: 5/1/2020 3:46:02 PM
To: Seidman, Emily [seidman.emily@epa.gov]
Subject: RE: NEW LITIGATION - Failure to Issue a Finding of Failure to Submit a Nonattainment State Implementation Plan (SO2)- Texas

Hi Emily,

Thanks for the note. We are internally discussing what the remaining NSR and EI obligations would look like and what form they could come to us – hope to get some initial thoughts back to you before the call – appreciate the note so we can be thinking about this now.

From: Seidman, Emily <seidman.emily@epa.gov>
Sent: Friday, May 01, 2020 9:00 AM
To: Schoellkopf, Lynde <Schoellkopf.Lynde@epa.gov>
Subject: FW: NEW LITIGATION - Failure to Issue a Finding of Failure to Submit a Nonattainment State Implementation Plan (SO2)- Texas

Hi Lynde,

Ex. 5 Deliberative Process (DP)

Of course, I expect that Monday's discussion will be informative, and I am not trying to get ahead of that conversation. But I wanted you to be aware of how this inquiry originated from my front office.

I'm around today if it would be helpful to chat before Monday. Have a good weekend!

Emily

Emily Seidman | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | WJCN 7426Y |
phone: (202) 564-0906

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From: Conrad, Daniel <conrad.daniel@epa.gov>

Sent: Tuesday, April 28, 2020 1:30 PM

To: OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>; OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>

Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Graham, Cheryl <Graham.Cheryl@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>

Subject: NEW LITIGATION - Failure to Issue a Finding of Failure to Submit a Nonattainment State Implementation Plan (SO2)- Texas

All,

On April 27, 2020, Sierra Club, represented by Matthew Miller and Joshua Smith, filed the attached Complaint for Declaratory and Injunctive Relief (Complaint). The Complaint alleges that the Administrator has violated 42 U.S.C. 7410(k)(1)(B) by failing to issue a finding that Texas failed to submit a nonattainment state implementation plan (SIP) within 18 months of the effective date of EPA's final rule - Air Quality Designations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard (NAAQS)—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County, 81 Fed. Reg. 89,870 (Dec. 13, 2016). The Complaint alleges that pursuant to 42 U.S.C. 7514(a), Texas was required to submit a final nonattainment SIP by July 12, 2018, and has failed to do so. The Complaint further alleges that pursuant to 42 U.S.C. 7410(k)(1)(B) when a state fails to submit the required plan as alleged, EPA must make a determination to that effect, no later than six months after the submittal was due (by January 12, 2019 in this case) and EPA has failed to do so. The Complaint seeks a court order compelling the Administrator to issue a finding that Texas failed to submit the requisite nonattainment plan ensuring all areas of the state come into compliance with the NAAQS. The Complaint further alleges that when EPA determines that a state has failed to submit a required Clean Air Act plan, the agency must, within two years, issue a federal plan to ensure attainment, unless the state corrects the deficiency and EPA approves that plan before EPA issues a federal plan citing 42 U.S.C. 7410(k)(1)(C); and 7410(c)(1). Sierra Club transmitted a Notice of Intent to File Suit pursuant to 42 U.S.C. § 7604(b)(2) on August 20, 2019 (also attached). Let me know if you have any questions.

-Dan

Daniel H. Conrad
U.S. Environmental Protection Agency
Office of General Counsel
Air and Radiation Law Office
(202) 564-0903

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From: Conrad, Daniel

Sent: Tuesday, August 20, 2019 4:59 PM

To: OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>; OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>

Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Smith, Kristi <Smith.Kristi@epa.gov>; Graham, Cheryl <Graham.Cheryl@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>

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Subject: NOTICE OF INTENT TO SUE - 42 U.S.C. § 7604(b)(2) - Failure to Issue a Finding of Failure to Submit a Nonattainment State Implementation Plan- Texas

All,

By letter dated August 20, 2019, Sierra Club, represented by Joshua Smith, provided a notice of intent to sue (NOI) pursuant to 42 U.S.C. 7604(b)(2) for the alleged “failure of the Administrator to perform an[] act or duty under this chapter which is not discretionary with the Administrator” under 42 U.S.C. 7604(a)(2). Specifically, the attached NOI alleges that the Administrator has violated 42 U.S.C. 7410(k)(1)(B) by failing to issue a finding that Texas failed to submit a nonattainment state implementation plan (SIP) within 18 months of the effective date of EPA’s final rule - Air Quality Designations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard (NAAQS)—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County, 81 Fed. Reg. 89,870 (Dec. 13, 2016). The NOI states that, pursuant to 42 U.S.C. 7514(a), Texas was required to submit a final nonattainment SIP by July 12, 2018, and has failed to do so; the SIP must meet the requirements of 42 U.S.C. 7502, 7514-7514a, and provide for attainment of the NAAQS as expeditiously as practicable, but no later than five years from the effective date of the rule. The NOI further alleges that once EPA issues a finding of failure to submit, it has a mandatory duty to either promulgate a FIP or approve a SIP within two years, citing 42 U.S.C. 7410(c)(1)(B). Let me know if you have any questions.

-Dan

Daniel H. Conrad
U.S. Environmental Protection Agency
Office of General Counsel
Air and Radiation Law Office
(202) 564-0903

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